

TENTATIVE RULINGS for CIVIL LAW and MOTION

January 21, 2010

Pursuant to Yolo County Local Rules, the following tentative rulings will become the order of the court unless, by 4:00 p.m. on the court day before the hearing, a party requests a hearing and notifies other counsel of the hearing. To request a hearing, you must contact the clerk of the department where the hearing is to be held. Copies of the tentative rulings will be posted at the entrance to the courtroom and on the Yolo Courts Website, at www.yolo.courts.ca.gov. If you are scheduled to appear and there is no tentative ruling in your case, you should appear as scheduled.

Telephone number for the clerk in Department Fifteen: (530) 406-6941

TENTATIVE RULING

Case: **Black v. Regents of the University of California**
Case No. CV CV 09-305

Hearing Date: **January 21, 2010** **Department Fifteen** **9:00 a.m.**

The demurrer by Brad St. Clair, Maurice Hollman and Allen Tollefson (“Individual Defendants”) to the first cause of action for race harassment on the ground that the amended complaint fails to state a cause of action is **SUSTAINED WITHOUT LEAVE TO AMEND**. Plaintiff seeks to hold the Individual Defendants personally liable for race harassment. In order to do so, the plaintiff must allege facts to establish that each of these defendants harassed him because of his race, i.e., that the plaintiff was subjected to harassment by each of these defendants that was sufficiently severe or pervasive to alter the conditions of the plaintiff’s employment and create an abusive working environment. (*Ettinger v. Veriflo Corp.* (1998) 67 Cal.App.4th 457, 465-467.) The allegations in the second amended complaint do not satisfy this standard.

If no hearing is requested, the tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

TENTATIVE RULING

Case: **Capital One Bank v. Alsbury**
Case No. CV G 09-1844

Hearing Date: **January 21, 2010** **Department Fifteen** **9:00 a.m.**

Plaintiff Capital One Bank’s motion for leave to amend the complaint is **DROPPED**. The body of plaintiff’s notice of motion misleadingly states that the motion is being heard in Room 103 at 725 Court Street. Plaintiff shall give notice that provides the address of the department in which the motion is being heard.

TENTATIVE RULING

Case: CMH Manufacturing West, Inc. v. Sacramento SBB Associates, LLC
Case No. CV CV 08-130
Hearing Date: January 21, 2010 **Department Fifteen** **9:00 a.m.**

CMH Manufacturing West, Inc.’s evidentiary objections: Evidentiary objection nos. 1, 5 (as to the clause “I, along with the other members of SBB, demanded that CMH repair the defective homes immediately so that SBB could proceed with the Project” only), 7 (as to the first sentence only), 8 (as to the second sentence only), 9, 10 (as to the first sentence and the clause “The Note signed by SBB was a non-recourse note secured only by ten specifically designated homes” only), 11 (as to the second sentence only), 12 (as to the second sentence only), 14 (as to the clause “I notified CMH that SBB would not be able to sell the homes until the defects were permanently fixed” only), 15 (as to the phrase “after expending considerable sums of money and costs before realizing that the homes were unmarketable due to the defects caused by CMH” only) and 19 (as to the last sentence only) are **SUSTAINED**. All other evidentiary objections are **OVERRULED**.

Sacramento SBB Associates, LLC’s evidentiary objections: Evidentiary objection nos. 6 (as to the second sentence only), 7, 9, 12, 14, 15, 16 (as to the phrase “performed all obligations required of it to be performed under the Note” only), 17, 20, 24-26, 32 (as to the hearsay statement by Gary Wiese only), 33 (as to the phrase “once SBB had completed the site work necessary to allow that unit to be delivered to and assembled on site” only), 34-35, 44 (as to the hearsay statement by Gary Wiese only), 45 (as to the phrase “until SBB finally completed the site work necessary to accept delivery of these units at the site” only), 47 (as to the phrase “which SBB knew TKC had already built in anticipation that SBB would be ordering them to complete the Project” only), 48-50, 52 (as to the clause “TKC did completely satisfy its obligation under the Note to deliver the homes to SBB” only), 53 (as to the clause “pursuant thereto, SBB, granted to Placer Title Company . . . 33 and 34” only), 54 (as to the phrase “which merely changed the parcels securing the Note. . . 33 and 34” in the first sentence only), 55 (as to the first sentence only), and 63 are **SUSTAINED**. All other evidentiary objections are **OVERRULED**.

CMH Manufacturing West, Inc.’s motion for summary adjudication: Plaintiff seeks summary adjudication of its first cause of action for breach of the promissory note dated August 4, 2005, and the deed of trust securing such note. In order to avail itself of the remedies for the defendant’s breach, the plaintiff must be free from substantial default. (1 Witkin, Summary of Calf. Law (10th ed. 2005) Contracts, § 848, p. 935.) Related to this requirement is the doctrine of failure of consideration. Failure of consideration operates as an implied condition. (*Id.* at § 813, p. 906; *see also* Civ. Code, § 1689, subd. (b)(2).) A material failure of consideration discharges a party’s duty to perform. (1 Witkin, Summary of Calf. Law (10th ed. 2005) Contracts, § 814, p. 906.)

The law implies into every contract a duty to perform with care, skill and faithfulness the thing agreed to be done. (*North American Chemical Co. v. Superior Court of Los Angeles County* (1997) 59 Cal.App.4th 764, 774; *Kuitens v. Covell* (1951) 104 Cal.App.2d 482, 485.) The negligent failure to observe this condition is a breach of the contract. (*North American*

Chemical Co., supra, 59 Cal.App.4th at 774.) The obligation to perform in a competent and reasonable manner is implied by law and need not be stated in the agreement. (*Ibid.*)

The promissory note obligated The Andrew Karsten Company (“TKC”) to manufacture and deliver 17 factory-built modular houses. Implied in the note is the requirement that TKC would perform in a competent and reasonable manner. This duty is implied by law, regardless of the existence of the side letter agreement. Plaintiff fails to cite authority in support of its contention that the purchase of a home warranty relieves a promisor of the obligation to perform in a competent manner.

The record before the Court shows that a triable issue of fact exists about whether TKC had performed its obligations under the promissory note and whether the alleged “defects” in the manufactured townhouses constitute a material failure of consideration. (Conely Declaration ¶¶ 7, 17, 22 and 24; Robbins Depo. 36: 2-10; 37: 24-38: 14; Lemley Depo. 65: 20-66: 10, 69: 5-14, 187: 8-12 and 282: 15-284: 25; Paul Andrew Karsten Depo. 55: 13-18; Harry Karsten Depo. 10: 2-9.) Accordingly, the plaintiff’s motion is **DENIED**.

Plaintiff is directed to prepare a formal order consistent with this ruling and in accordance with Code of Civil Procedure section 437c, subdivision (g) and California Rules of Court, rule 3.1312.

TENTATIVE RULING

Case: Hooshnam v. Battaglia
Case No. CV CV 07-1779

Hearing Date: January 21, 2010 **Department Fifteen** **9:00 a.m.**

Plaintiffs’ motion for terminating sanctions: Plaintiff cites Code of Civil Procedure section 2023.030, subdivision (d)(4) and *Electronic Funds Solutions, LLC v. Murphy* (2005) 134 Cal.App.4th 1161 in support of her motion for terminating sanctions. *Electronic Funds Solutions, LLC v. Murphy* is factually distinguishable. Code of Civil Procedure section 2023.030 provides that to the extent authorized by the chapter governing any particular discovery method, the court may impose monetary, issue, evidence and/or terminating sanctions against anyone engaging in conduct that is a misuse of the discovery process. The statutes governing the discovery requests at issue do not authorize terminating sanctions in the first instance. (Code Civ. Proc., §§ 2025.450 and 2030.290.) Accordingly, the motion for terminating sanctions is **DENIED**.

Plaintiff’s motion to compel the defendants to appear at a deposition and to produce the documents described in the notice of deposition dated October 6, 2009: The parties agreed, at the January 7, 2010, hearing in this matter, that the defendants’ depositions shall take place on January 27, 2010, the afternoon of January 28, 2010, and January 29, 2010. Defense counsel Richard Curtis was directed to provide an order setting forth the depositions. Mr. Curtis shall provide such order at the hearing on January 21, 2010.

The motion to compel the defendants to produce the categories of documents described in the notice of deposition dated October 6, 2009, is **GRANTED** as follows. Jamshied Daman shall

produce the documents described in nos. 1-2 and 4-12 in the Notice of Deposition relating to him. Rebecca Daman shall produce the documents described in nos. 1-9 and 11 in the Notice of Deposition relating to her. Eugene Grover shall produce the documents described in nos. 1-3 and 5-10 in the Notice of Deposition relating to him. As for request no. 12 to Eugene Grover, Mr. Grover shall produce responsive documents relating to Jamshied Daman for the time period January 1, 2003, through the present.

Plaintiff's motion to compel the defendants to answer the form interrogatories from the plaintiff: This motion is **GRANTED**. (Code Civ. Proc., § 2030.290.) The request for monetary sanctions against the defendants is granted in the sum of \$1,190.00. Defendants shall serve verified answers to the form interrogatories, sets no. one from the plaintiff, without objections, **by no later than March 22, 2010.**

Richard Curtis' motion to withdraw as counsel: This motion is **DENIED WITHOUT PREJUDICE**. Mr. Curtis failed to file the mandatory forms. (California Rules of Court, Rule 3.1362.)

Defendants' motion to continue the trial and associated dates: The Court defers ruling on this motion. Mr. Curtis is directed to notify the Court of when he will file the required forms for his motion to withdraw as counsel.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

TENTATIVE RULING

Case: Lane Supply, Inc. v. Ameri Oil Company, Inc., et al.
Case No. CV G 07-2702

Hearing Date: January 21, 2010 Department Fifteen 9:00 a.m.

Plaintiff Lane Supply, Inc.'s unopposed motions to compel defendants Ameri Oil Company, Inc. and Kang Property, Inc. to respond to demands for inspection are **GRANTED**. (Code Civ. Proc., §§ 708.030 and 2031.300.) Defendant shall serve verified answers to the above-listed discovery requests (together with any responsive documents), without objection, by February 8, 2010.

The request for monetary sanctions against defendant Ameri Oil Company, Inc. is **GRANTED** in the amount of \$525.00. (Code Civ. Proc., § 2031.300, subd. (c).) The request for monetary sanctions against defendant Kang Property, Inc. is **GRANTED** in the amount of \$525.00. (*Ibid.*)

Plaintiff shall serve the defendant with a copy of this ruling by no later than January 25, 2010.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice, except as provided herein, is required.

TENTATIVE RULING

Case: **Newton v. Brewer**
Case No. CV UD 09-3193

Hearing Date: **January 21, 2010** **Department Fifteen** **9:00 a.m.**

Defendant Gina Brewer's demurrer to the complaint is **DROPPED**. Plaintiff Martha Newton has filed an amended complaint, to which defendant has filed an answer. (Code Civ. Proc., § 472.)

TENTATIVE RULING

Case: **Pacific Bell Directory v. Jafarian et al.**
Case No. CV G 06-1990

Hearing Date: **January 21, 2010** **Department Fifteen** **9:00 a.m.**

The request of Gary Matta to be relieved as counsel is **DENIED WITHOUT PREJUDICE**. His moving papers do not comply with California Rule of Court 3.1362.

Defendant's motion to continue the trial set for January 25, 2010, and plaintiff Pacific Bell Directory's motion to compel is **GRANTED**. The trial date is **VACATED** and the parties are directed to appear at a case management conference in Department 10 on February 25, 2010, at 1:30 p.m. so trial may be reset. Plaintiff's motion to compel is **CONTINUED** to February 25, 2010, in Department 15, at 9:00 a.m.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

TENTATIVE RULING

Case: **Talani v. Storybook Investment Properties, LLC.**
Case No. CV CV 07-1787

Hearing Date: **January 21, 2010** **Department Fifteen** **9:00 a.m.**

Defendant Storybook Investment Properties, LLC's request for judicial notice of Exhibits 2 through 5 to the Declaration of Natalya Kozlova-Grunwald is **GRANTED**. (Evid. Code, § 452, subd. (c).) Defendant's request for judicial notice of Exhibit 1 to the Declaration of Natalya Kozlova-Grunwald is **DENIED**. The letter from Victor Talani to the City of West Sacramento is not an official act of a legislative, executive or judicial department.

Defendant's motion for summary adjudication of the first cause of action for fraud is **DENIED**. The pleadings frame the issues before the Court. The first cause of action states a claim for fraudulent concealment. Defendant failed to show that there is no triable issue of material fact about the allegations in paragraphs 19-20 and 22 of the first amended complaint. For example, the defendant has not shown that there is no evidence that (1) in June or July, 2000, the defendant knew that Mr. Talani would not agree to give the defendant the property at issue if Mr. Talani knew the size of the new daycare center, and (2) the defendant deliberately

concealed from Mr. Talani the size of the new daycare center in order to induce Mr. Talani to deed the property at issue to the defendant and to cooperate with the lot line adjustment.

Defendant contends that its expansion plans for the daycare center were fully disclosed to the plaintiff. Defendant's principal Betty Warthan does not recall exactly what she told Mr. Talani about the defendant's expansion project during Mrs. Warthan and Mr. Talani's June or July, 2000, discussion. (Warthan Depo. 13: 10-23; Defendant's response to Plaintiff's request for admission no. 2 (Plaintiff's Exhibit 5).) The Court cannot conclude that Mrs. Warthan fully disclosed the defendant's expansion plans to Mr. Talani in June or July, 2000.

It is reasonable to infer from the record before the Court that Mrs. Warthan did not show Mr. Talani any blueprints for the new daycare center until after June or July, 2000, and after Mr. Talani had already deeded the property at issue to the defendant. (Warthan Depo. 16: 25-17: 15; Undisputed Material Fact ("UMF") 28.) One can hardly conclude that showing Mr. Talani the blueprints after he had already given the defendant the property at issue constitutes "full disclosure."

Further, there is no evidence about what, if anything, Mrs. Warthan told Mr. Talani when she showed him the blueprints for the new daycare center. Mr. Talani testified that he does not remember being told that the defendant was planning to increase the size of its daycare facility. (UMF 16.) Mr. Talani testified that he did not find out about the size of the new daycare facility until 2006. (Talani Depo. 41: 4-12 and 74: 15-21.) Therefore, a triable issue of fact exists about disclosures made to Mr. Talani.

As for notices of meetings before the City of West Sacramento Planning Commission, there is no evidence that the City actually sent Mr. Talani notice of any meetings. Mr. Talani's name is not on what appears to be a mailing list in Exhibit 3 to the Declaration of Natalya Kozlova-Grunwald.

The motion for summary adjudication of the second cause of action for conversion is **GRANTED**. The tort of conversion applies to personal property, not real property. (*Salma v. Capon* (2008) 161 Cal.App.4th 1275, 1295; 5 Witkin, Summary of Calif. Law (10th ed. 2005) Torts, § 699, p. 1023.)

The motion for summary adjudication of the third cause of action for quiet title is **DENIED** on the grounds raised. A quiet title action may be based on a claim that the defendant's legal title to property was obtained through fraud and the plaintiff's equitable right to the property is superior to the defendant's. (5 Witkin, Cal. Procedure (5th ed. 2008) Pleading, §§ 667 and 669, pages 93-96.) As discussed above, it has not been shown that there is no triable issue of material fact as to the plaintiff's fraud claim.

Plaintiff argues that the September 23, 2003, grant deed should be voided. (Opposition brief, pages iii-vi.) The Court notes that the third cause of action is based on the Certificate of Compliance dated September 10, 2005, not the September 23, 2003, grant deed. (First Amended Complaint ¶¶ 27-32.)

Defendant is directed to prepare a formal order consistent with this ruling and in accordance with Code of Civil Procedure section 437c, subdivision (g) and California Rules of Court, rule 3.1312.

Case: **Zochlinski v. The City of Davis**

Case No. CV PT 09-2287

Hearing Date: **January 21, 2010** **Department Fifteen** **9:00 a.m.**

Demurrer to Writ of Mandate A: The inquiry in a writ of mandate extends to questions about whether the respondent has proceeded without or in excess of jurisdiction; whether there was a fair trial; and whether there was any prejudicial abuse of discretion. (Code Civ. Proc., § 1094.5, subd. (b).) Petitioner alleges that the hearing officer's decision is arbitrary, capricious, improper, biased, and outside her jurisdiction for various reasons. (Petition page 19, lines 3-5 and Petition ¶¶ 22-24 and 26-27.) For purposes of a demurrer, the Court must deem to be true the factual allegations in the petition. (*Fonseca v. Fong* (2008) 167 Cal.App.4th 922, 928.) The Court cannot conclude that the petition as to Writ of Mandate A is so unclear that the respondents cannot reasonably respond. Accordingly, the demurrer to this writ of mandate is **OVERRULED**.

Demurrer to Writs of Mandate B and C: This demurrer is **OVERRULED**. Traditional mandate may lie to enforce a civil right. (Calif. Civil Writ Practice (4th ed. Cont.Ed.Bar 2008) §2.56; *In re Marriage Cases* (2008) 43 Cal.4th 787; *Stone v. Bd. Of Directors* (1941) 47 Cal.App.2d 749.) In Writs of Mandate B and C, Petitioner alleges that he is being subjected to unequal treatment based on, among other things, his religion and disability. (Petition, page 20, lines 2-7 and page 21, lines 14-21; Petition ¶¶ 4, 33-34 and 37.)

Demurrer to Writs of Prohibition A, B and C: This demurrer is **SUSTAINED WITH LEAVE TO AMEND**. A writ of prohibition arrests the proceedings of a tribunal, corporation, board, or person exercising judicial functions, when such proceedings are without or in excess of the jurisdiction of such tribunal, corporation, board or person. (Code Civ. Proc., § 1102.) None of the acts complained of in the writs of prohibition relate to the exercise of judicial functions.

Petitioner shall file an amended petition for writ(s) of prohibition, if any, **by no later than February 16, 2010.**

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.